SUPREME COURT OF THE UNITED STATES.

No. 141.—October Term, 1927.

The Delaware, Lackawanna and Western Railroad Company, Petitioner, vs. John Rellstab, Judge of the United States District Court for the District of New Jersey, and the United States District Court for the District of New Jersey.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 16, 1928.]

Mr. Justice Holmes delivered the opinion of the Court.

In this case one Ginsberg, in December, 1921, recovered judgment in the District Court against the petitioner for injuries to himself and a minor son and for the death of another son, caused by a collision, at a crossing, between the plaintiff's truck and one of the petitioner's trains. The judgment afterwards was set aside on the evidence of two important witnesses, husband and wife, that they had committed perjury at the trial. A new trial was had which resulted in a judgment for the defendant, the present petitioner. The judgment was entered on June 21, 1923. It was taken to the Circuit Court of Appeals on writ of error and on March 21, 1924, a mandate from that court affirmed the judgment with costs. See 296 Fed. Rep. 439. The witnesses who had testified for the plaintiff at the first trial testified for the defendant at the second, and after the term of the District Court in which the foregoing steps had been taken had expired without being extended in any form, the husband made an affidavit showing that his testimony at both trials was false and that in fact he knew nothing about the matter. The trial Judge was applied to, and after hearing testimony in open court he made an order on May 9, 1925, purporting to set aside the judgment that had been affirmed by the Circuit Court of Appeals during a previous unextended term. The peti-

tioners thereupon applied to the Circuit Court of Appeals for a writ of mandamus to reinstate the judgment, but the Circuit Court of Appeals held that it had no jurisdiction to grant the writ. 15 F. (2d) 137. A writ of certiorari was granted by this Court. 273 U. S. 685.

However strong may have been the convictions of the District Judge that injustice would be done by enforcing the judgment, he could not set it aside on the ground that the testimony of admitted perjurers was perjured also at the second trial. The power of the Court to set aside its judgment on this ground ended with the term. *In re Metropolitan Trust Co.*, 218 U. S. 312, 320. As the Court was without jurisdiction to vacate the judgment mandamus is the appropriate remedy unless to grant that writ is beyond the power of the Circuit Court of Appeals. *In re Metropolitan Trust Co.*, 218 U. S. 312, 321. We perceive no reason to doubt the power of that Court. It had affirmed the judgment of the Court below. *Brown* v. *Alton Water Co.*, 222 U. S. 325, 332. Like other appellate courts (*In re Potts*, 166 U. S. 263,) the Circuit Court of Appeals has power to require its judgment to be enforced as against any obstruction that the lower Court, exceeding its jurisdiction, may interpose. *McClellan* v. *Carland*, 217 U. S. 268. The issue of a mandamus is closely enough connected with the appellate power.

But it is said that the granting of the writ of mandamus is discretionary and it is implied that if we are of opinion that the Circuit Court of Appeals was mistaken in denying its power to grant the writ, that court still might deny it on the ground that injustice would be done if the judgment were allowed to stand. But neither Court would be warranted in declaring the judgment unjust after it had become unassailable—certainly not on a speculation as to which of three statements is true, when it was known at the trial that the witness was perjured, either at the first trial, as he said, or then—not to speak of the further difficulties that the plaintiff might encounter in the recent decision of *Baltimore & Ohio R. R. Co.* v. *Goodman*, October 31, 1927. It certainly would be unjust to leave the case in the air, because the District Court had made an unwarranted attempt to set aside a judgment that it had no jurisdiction to touch.

It follows that the writ should issue.

Judgment reversed.